

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

27485

**FILE:**

B-212982

**DATE:** February 22, 1984**MATTER OF:**

Lucas Machine, Division of Litton  
Industrial Products, Inc.

**DIGEST:**

1. Additional materials submitted in support of a timely protest will be considered as part of the protest. The additional materials only pertain to the protest basis clearly stated in the initial protest.
2. A solicitation requirement that the bidder must offer a planer bed-type machine, as opposed to a retractable saddle-type machine, to produce M-178 Gun Mount cradles is not unduly restrictive of competition where the agency claims that only the planer bed-type machine can hold required tolerances on a consistent production basis and the protester fails to show otherwise.
3. Where the protester merely alleges that only the awardee can meet the specifications of the solicitation, the protester has not shown that the agency unreasonably determined its actual minimum needs and that the specifications are thus unduly restrictive of competition.

Lucas Machine, Division of Litton Industrial Products, Inc. (Lucas), protests the award of a contract under invitation for bids (IFB) No. DAAA08-83-B-0213 issued by the United States Army Rock Island Arsenal (RIA), Department of the Army, to DeVlieg Machine Company (DeVlieg), for three machining centers to produce M-178 Gun Mount cradles.

Lucas contends that the specifications were written exclusively around the specifications of one foreign manufacturer, DeVlieg, that only DeVlieg could meet the specifications, and that, therefore, the specifications were unduly restrictive of competition.

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We deny the protest.

Lucas contends that the requirement to offer a planer bed-type machine is unduly restrictive because all manufacturers other than DeVlieg use retracting saddle-type horizontal boring mills. Further, it is alleged that this type of machine, offered widely by domestic manufacturers, can produce parts at the critical tolerances (i.e., margin of error), required by the specifications. Lucas argues that the machine that it would have offered had it not considered the specifications unduly restrictive holds tolerances far tighter than those required by RIA in the production of the M-178 Gun Mount cradles. Lucas also alleges that it has never been proven that a planer bed-type machine is any less susceptible to temperature variation or external vibrations than a retracting saddle-type machine. Lucas further contends that the requirement that a column be bolted to the side, rather than to the top, of the bed and the specification of the "way configurations" are requirements which only DeVlieg can meet. Finally, in its postconference comments, Lucas included a list of suggested changes to the specifications which Lucas claims would allow Lucas and other domestic manufacturers to bid.

Initially, the Army contends that Lucas has raised its argument about the requirement for "way configurations" and its list of suggested changes to the specifications, in a piecemeal fashion, after its initial protest and that these issues should be dismissed as untimely raised.

We have held that we generally will consider later-filed materials and/or arguments which merely provide further support for an already timely protest. Kappa Systems, Inc., 56 Comp. Gen. 67 (1977), 77-1 CPD 412. The Kappa Systems rule presumes a timely initial protest that merely lacks detail. Blue Cross-Blue Shield of Tennessee, B-210227, May 23, 1983, 83-1 CPD 555. In this case, Lucas protested against the specifications of the IFB as being unduly restrictive of competition, and its later-filed materials and arguments pertain to this same issue of protest. We therefore find the Kappa Systems rule to be applicable and we will consider the issues.

Concerning the merits of the protest, the Army contends that, contrary to Lucas' allegation, three bidders offered a planer bed-type machine, all bidders offered a column bolted

to the side of the machine, and only two prospective bidders, including Lucas, objected to the requirements for "way configurations." The Army states that this shows that other manufacturers do offer the required "way configurations." The Army offers the following explanation as to why a planer bed-type machine can hold closer tolerances than a retracting saddle-type machine:

"Planer bed type boring mills or machining centers and retracting saddle type boring mills or machining centers differ principally in the extent to which the saddles are supported. The planer bed type table is completely supported over its full range of travel by the machine saddle. The machine saddle is completely supported over its full range of travel by machine bed, and the machine bed is completely supported by the foundation. The machine bed, in the case of the planer bed type machine is a single, structurally stable, heavy duty casting or steel fabrication which is anchored to the foundation and leveled by means of one set of anchor bolts and jack screws. The planer bed design provides a compact machine which tends to move as one single unit. The retracting saddle type machine is also provided with a machine bed which is a structurally stable, heavy duty casting or steel fabrication. The machine bed supports a machine saddle, which then supports the machine table. However, only the center portion of the saddle is supported by the machine bed. Both ends of the saddle extend several feet beyond the support of the machine bed and are then supported by outriggers or vertical supports, of different cross section than the machine bed. The outriggers are fastened to the underside of the saddle and travel with the saddle, moving on rails which are anchored to the foundation and leveled by means of a separate set of anchor bolts and jack screws. Different types of metals and structures with different cross sections such as are found in the rails, outriggers, and bed, react differently to vibration and temperature changes in the surrounding area. A small force applied under the bed of a planer bed type machine would cause no distortion in the piece part due to the

structural strength built into the bed, and the fact that all machine components are supported entirely by the bed. The same force applied under the outriggers or rail type ways of a retracting saddle type machine could cause distortion in the piece part due to the lesser cross section and strength of the saddle and the distance the force is applied from the machine bed."

The Army also argues that physical environment inherent in the open shops at RIA, including temperature variations and external vibrations, have proven that a retracting saddle-type machine, cannot achieve and hold required production tolerances, and that the construction of facilities to eliminate the effects of physical conditions on a retracting saddle-type machine would be expensive and impractical at RIA due to space limitations. The Army alleges that the nearly 20 years of experience of some of its personnel working with the difficulties in machining M-178 Gun Mount cradles has led to the conclusion that only a planer bed-type machine is capable of producing the M-178 Gun Mount cradles on a continuous production basis at RIA. Finally, the Army contends that it is inherent in the design of a planer bed-type machine for a column to be attached to the side of the bed.

The determination of the government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Ingersoll-Rand Company; Sullair Corporation, B-207246.2; B-211811, September 28, 1983, 83-2 CPD 385. Further, it is proper for a contracting agency to determine its needs based on its actual experience. Radix II, Incorporated, B-211884, September 26, 1983, 83-2 CPD 375. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Ridg-U-Rak, Inc., B-211395, August 8, 1983, 83-2 CPD 179. The protester has the burden of affirmatively proving its case. Ingersoll-Rand Company; Sullair Corporation, supra.

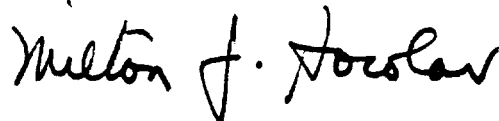
While needs should be determined so as to maximize competition, we have held that requirements which limit competition are acceptable so long as they are legitimate agency needs, and a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Educational Media Division, Inc., B-193501, March 27, 1979, 79-1 CPD 204.

We do not believe that the record supports Lucas' contentions that the specifications exceed the government's minimum needs. The Army justifies requiring a planer bed-type machine over a retracting saddle-type machine because physical conditions experienced at RIA combined with the structure of a retracting saddle-type machine indicate that the retracting saddle-type machine is not capable of producing the M-178 Gun Mount cradles to the required tolerances on a consistent production basis. While Lucas claims that a retracting saddle-type machine can produce the M-178 Gun Mount cradles to the required tolerances, the only evidence Lucas offers in support of its claim is its descriptive literature which merely states that its model 30T machine can produce at certain close tolerances. Moreover, Lucas does not show that physical conditions will have no more effect on the ability of a retracting saddle-type machine to produce to the required tolerances on a consistent production basis than on the ability of a planer bed-type machine; in fact, Lucas argues that it cannot be proven otherwise. In view of the above, we cannot conclude that RIA acted unreasonably in determining that a planer bed-type machine was the only type of machine that could hold the required tolerances on a consistent production basis.

Concerning the requirement for a column to be bolted to the side of the bed, while Lucas contends that only DeVlieg can meet this requirement, the Army states that all bidders offered such a column. As to the requirements for way configurations, which Lucas argues only DeVlieg can meet, the Army contends that only two prospective bidders objected to these requirements, which led RIA to conclude that other manufacturers do offer the required way configurations. In our view, Lucas has not shown that it was unreasonable for RIA either to require a column be bolted to the side, not the top, of the bed or to require certain way configurations.

With regard to Lucas' list of suggested changes to the specification, we cannot conclude, in the absence of any further evidence as to why the particular requirements exceeded RIA's actual minimum needs and thus were unduly restrictive, that RIA unreasonably determined its actual minimum needs in writing these requirements.

We deny the protest.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, slightly slanted style.

Acting Comptroller General  
of the United States